IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

FAO.No. 188 of 2005()

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AGAINST THE ORDER DATED 21/07/2005 IN IA.802/2005 IN
AS.84/2005 of DISTIRCT COURT,KOLLAM.
OS NO.404/2002 OF ADDITIONAL MUNSIFF COURT, KOLLAM.

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APPELLANTS/PETITIONERS/APPELLANTS/DEFENDANTS 1 & 2

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1. G. GOPINATHAN PILLAI,
   LEKSHMI NIVAS, MANAKKADU CHERRY,
   VADAKKEVILA VILLAGE,
   KOLLAM.

2. REMADEVI, LEKSHMI NIVAS,
   MANAKKADU CHERRY, VADAKKEVILA VILLAGE,
   KOLLAM.

BY ADV. SRI.R.SATISH KUMAR
SMT.PRIYA S.RANI

RESPONDENTS/COUNTER PETITIONERS/RESPONDENTS/PLAINTIFFS

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1. J.PAUL ALSO KNOWN AS THANKACHAN,
   THANDATHU HOUSE, PUNATHALA,
   THANKASSERI, KOLLAM WEST VILLAGE,
   (FROM C.J.SADANAM, NANTHIRICKAL, VELLIMON.P.O.,
   PERINAD, KOLLAM).

2. JAYA PAUL,
   THANDATHU HOUSE, PUNATHALA,
   THANKASSERI, KOLLAM WEST VILLAGE,
   (FROM C.J.SADANAM, NANTHIRICKAL,
   VELLIMON.P.O., PERINAD, KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 14.12.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. PADMANABHAN NAIR ,J.**

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**F.A.O.No.188 of 2005**

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**Dated, this the 14th day of December, 2007**

**JUDGMENT**

The defendants in O.S.No.404/2002 on the file of the Additional Munsiff Court, Kollam who are the appellants in A.S.No.84/2005 on the file of the District Court, Kollam are the appellants. Respondents filed a suit for injunction. The suit was decreed and a decree for permanent prohibitory injunction was passed. Challenging that decree and judgment appellants filed A.S.No.84/2005 before the District Court, Kollam. In that appeal they filed I.A.No.802/2005 for an order of temporary injunction. Lower appellate court took a view that if the relief of injunction sought for is granted that will amount to a counter injunction conflicting with the decree passed by the trial court and hence such a relief cannot be granted. Lower appellate court took a view that the appeal itself can be heard and disposed of. However, the lower appellate court restrained respondents 1 and 2 from committing any waste in the property. Challenging that order the appellants in the first appeal have filed this appeal.

2. The suit filed by the respondents was decreed on 31.5.2005. Appellants filed A.S.No.84/2005 along with I.A.No.802/2005. That application was disposed of on 21.7.2005. For the last about two and a half years the decree of injunction passed is in force. I do not think I will be justified in altering that status quo at this distant point of time. According to me the proper course is to

direct the lower appellate court to dispose of A.S.No.84/2005 itself within a time limit.

In the result, appeal is disposed of with a direction to the lower appellate court to dispose of A.S.No.84/2005 as expeditiously as possible, at any rate, before the closing of courts for summer vacation.

I.A.No.2581/2005 in F.A.O. No.188/2005 will stand dismissed.

**K. PADMANABHAN NAIR,**
**JUDGE.**

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